REL: May 6, 2022

Alabama Court of Criminal Appeals

OCTOBER TERM, 2021-2022

CR-20-0148

State of Alabama

v.

Gregory Labarron Crandle

Appeal from Mobile Circuit Court
(CC-17-3052)

On Return to Remand

McCOOL, Judge.

The State of Alabama appeals the Mobile Circuit Court's order granting Gregory Labarron Crandle's motion to dismiss the case against him.

Facts and Procedural History

On October 7, 2020, Crandle filed a motion to dismiss based on the State's alleged violation of his right to a speedy trial and failure to afford him due process of law. In his motion, Crandle alleged that he was arrested on September 20, 2016, for the offense of second-degree assault and that he was subsequently indicted in June 2017, for second-degree assault. Crandle alleged that his right to a speedy trial under Barker v. Wingo, 407 U.S. 514 (1972), had been violated because, he says: he had been confined in the Mobile Metro Jail or with the Alabama Department of Mental Health for the entirety of the four years since his arrest; that he had requested several times that the court require the charges to be either adjudicated or dismissed; and that witnesses had disappeared and evidence had been lost, which would require him to "experience unfair prejudice having to defend himself on [a] charge" relating to an incident that occurred more than four years ago. (C. 5-6.)

The State filed a response to Crandle's motion to dismiss. In its response, the State conceded that four years had passed since the arrest warrant had been issued against Crandle and, thus, that the length of the delay was presumptively prejudicial and triggered the examination of the remaining Barker factors. The State further claimed that the delay was partially a negligent delay – i.e., the one-year gap between Crandle's arrest and the indictment was the result of an overburdened judicial system – and partially a justified delay – i.e., multiple delays caused by Crandle's decision to seek youthful-offender status followed by a request for a competency evaluation in a capital-murder case against him, and Crandle's request for postponement of the prosecution for his second-degree-assault offense. The State also argued that Crandle failed to assert his right to a speedy trial until October 2020 and, thus, that the third Barker factor weighed against Crandle. The State claimed that Crandle's allegation that he was prejudiced by the delay was insufficient to show that the delay violated his rights.

Following a hearing on the matter, the circuit court issued a written order granting Crandle's motion to dismiss the second-degree-assault

charge. The State appealed the circuit court's dismissal of the charge against Crandle.

On appeal, the State argued, in part, that the circuit court erred by improperly granting Crandle's motion to dismiss without considering the Barker v. Wingo, 407 U.S. 514 (1972), factors. This Court agreed, stating:

> "This Court has previously held that, where the record does not affirmatively indicate that the trial court weighed each of the Barker factors, a remand is necessary for the circuit court 'to make specific, written findings of fact as to each Barker factor with reference to the principles set forth by the Alabama Supreme Court in Ex parte Walker, [928 So. 2d 259 (Ala. 2005)].' State v. Robinson, 79 So. 3d 686 (Ala. Crim. App. 2011). See also State v. Tolliver, 171 So. 3d 94 (Ala. Crim. App. 2014); Murray v. State, 12 So. 3d 150 (Ala. Crim. App. 2007); Peterson v. State, 12 So. 3d 154 (Ala. Crim. App. 2007); State v. Stovall, 947 So. 2d 1149 (Ala. Crim. App. 2006).
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> "In the present case, the record does not affirmatively show that the circuit court weighed each of the factors as required by Barker, supra, and Ex parte Walker, supra. Here, the court held a hearing on Crandle's motion to dismiss; however, no evidence was presented and neither party presented arguments. Although the circuit court acknowledged at the hearing that Crandle had been in jail for 'more than four years,' the court stated that it was dismissing the instant case because Crandle was currently in jail awaiting commitment to the Department of Mental Health due to 'mental infirmity,' and that, if Crandle ever regained competency, he would still be incarcerated and face trial for a capital-murder charge. (R.3-4.) It is unclear how the fact that Crandle will face another charge if he regains his mental competency relates to any of the Barker factors in the present case. The circuit court's written order stated only that Crandle's motion to

> dismiss was granted, over the objection of the State. The record, therefore, is devoid of any indication of the circuit court's findings on the Barker factors. Consequently, the record before this Court is devoid of sufficient information to address the State's claim regarding whether the court's ruling on Crandle's motion to dismiss for violation of his right to a speedy trial was proper."

State v. Crandle, [Ms. CR-20-0148, October 8, 2021] ___ So. 3d ___, ___ (Ala. Crim. App. 2021). We remanded this case for the circuit court to make specific written findings of fact as to each Barker factor.

On remand, the circuit court followed this Court's instructions and issued a lengthy, detailed order, in which it explained its findings as to each Barker factor. Specifically, the court noted that the State had conceded that the length of the delay was presumptively prejudicial and found that the length of the delay -- over four years -- triggered the requirement to balance the remaining Barker factors. Next, the court found that "because the State was focused entirely on [Crandle's] murder charge, the record of delay as to the assault second charge is at the least negligent delay, and th[e] negligent delay weighs against the State." (Record on Return to Remand, 16.) As to the third Barker factor concerning Crandle's assertion of his right to a speedy trial, the court found that the factor did not weigh in favor of either party because the

facts in this case "balance" each other out. Id. Specifically, the court stated that Crandle's failure to assert his right to a speedy trial sooner suggests he either acquiesced to the delay or suffered minimal prejudice, but the court also noted that Crandle was being held in prison without bond on his capital-murder case, that he had been found to be of low intelligence and had been diagnosed with "mild mental retardation," and that his mental competency issue had prevented him from going to trial. However, the court found that the State had also notably failed to pursue the second-degree-assault case. Lastly, the court determined that Crandle had suffered "oppressive pre-trial confinement." (Record on Return to Remand, 17.) For those reasons, the court stated, it granted Crandle's motion to dismiss for lack of a speedy trial.

Discussion

Both parties submitted supplemental briefs for this Court to consider on return to remand. In its supplemental brief, the State now argues that, although four years passed between Crandle's arrest for second-degree assault and the date on which the circuit court initially summarily dismissed the case against him, the length of the delay was not presumptively prejudicial because, the State says, a large portion of

the delay was not occasioned by the State. Thus, the State claims, "because the 'length of delay' factor in this case was not presumptively prejudicial, Crandle's denial of speedy trial claim was due to fail without reference to the other three Barker factors." (State's Supplemental Brief, at 15.) The State further claims that, even if the delay had been presumptively prejudicial, Crandle still should not have prevailed on his speedy-trial claim because: 1) the reasons for the delay were attributable to Crandle; 2) Crandle failed to assert his right to a speedy trial in a timely manner; and 3) Crandle failed to demonstrate that he was prejudiced by the delay.

"This Court generally reviews the denial of a habeas petition under an abuse-of-discretion standard." Shelly v. Alabama Dep't of Corr., 109 So. 3d 1145, 1147 (Ala. Crim. App. 2012) (citing Miller v. State, 668 So. 2d 912, 917 (Ala. Crim. App. 1995)). However, where this Court's review involves only an issue of law and the application of the law to undisputed facts, our review is de novo. Ex parte Walker, 928 So. 2d 259 (Ala. 2005)("Walker's case involves only issues of law and the application of the law to the undisputed facts. Thus, our review is de novo.").

In Ex parte Walker, 928 So. 2d 259 (Ala. 2005), the Alabama Supreme Court explained:

> "An accused's right to a speedy trial is guaranteed by the Sixth Amendment to the United States Constitution and by Art. I, § 6, of the Alabama Constitution, 1901. As noted, an evaluation of an accused's speedy-trial claim requires us to balance the four factors the United States Supreme Court set forth in Barker: '[l]ength of delay, the reason for the delay, the defendant's assertion of [her] right, and prejudice to the defendant.' 407 U.S. at 530, 92 S.Ct. 2182 (footnote omitted). See also Ex parte Carrell, 565 So. 2d [104,] 105 [(Ala. 1990)]. 'A single factor is not necessarily determinative, because this is a "balancing test, in which the conduct of both the prosecution and the defense are weighed."' Ex parte Clopton, 656 So.2d at 1245 (quoting Barker, 407 U.S. at 530, 92 S.Ct. 2182)."

928 So. 2d at 263.

A.

Concerning the first Barker factor, the length of delay, the Alabama Supreme Court has explained:

> "In Doggett v. United States, the United States Supreme Court explained that the first factor—length of delay—'is actually a double enquiry.' 505 U.S. 647, 651, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992). The first inquiry under this factor is whether the length of the delay is '"presumptively prejudicial."' 505 U.S. at 652, 112 S.Ct. 2686 (quoting Barker, 407 U.S. at 530–31, 92 S.Ct. 2182). A finding that the length of delay is presumptively prejudicial 'triggers' an examination of the remaining three Barker factors. 505 U.S. at 652 n. 1, 112 S.Ct. 2686 ('[A]s the term is used in this threshold context, "presumptive prejudice" does not necessarily indicate a

statistical probability of prejudice; it simply marks the point at which courts deem the delay unreasonable enough to trigger the Barker enquiry.'). See also Roberson v. State, 864 So. 2d 379, 394 (Ala. Crim. App. 2002).

"In Alabama, '[t]he length of delay is measured from the date of the indictment or the date of the issuance of an arrest warrant—whichever is earlier—to the date of the trial.' Roberson, 864 So.2d at 394. Cf. § 15–3–7, Ala.Code 1975 ('A prosecution may be commenced within the meaning of this chapter by finding an indictment, the issuing of a warrant or by binding over the offender.'); Rule 2.1, Ala. R.Crim. P. ('All criminal proceedings shall be commenced either by indictment or by complaint.'). The length of the delay in this case was approximately 50 months: Walker was indicted on January 14, 2000, and she pleaded guilty on March 25, 2004. See Carrell, 565 So. 2d at 107 (calculating the length of delay from defendant's indictment until his plea of guilty). The State concedes (and both the trial court and the Court of Criminal Appeals held) that the 50–month delay in Walker's case was presumptively prejudicial. A finding here of presumptive prejudice is supported by Alabama caselaw, see, e.g., Ex parte Taylor, 720 So. 2d 1054, 1057 (Ala. Crim. App. 1998) (more than 60–month delay); Benefield v. State, 726 So. 2d 286, 290 (Ala. Crim. App. 1997) (42–month delay); Mansel v. State, 716 So. 2d 234, 236 (Ala. Crim. App. 1997) (26–month delay); Ingram v. State, 629 So. 2d 800, 802 (Ala. Crim. App. 1993) (19–month delay); Beaver v. State, 455 So. 2d 253, 254 (Ala. Crim. App. 1984) (16–month delay); Broadnax v. State, 455 So. 2d 205, 206–07 (Ala. Crim. App. 1984) (more than 26–month delay); but see Ex parte Apicella, 809 So. 2d 865, 869 (Ala. 2001)(14–month delay not presumptively prejudicial); Campbell v. State, 709 So. 2d 1329, 1334 (Ala. Crim. App. 1997) (26–month delay not presumptively prejudicial); and by federal cases that generally hold that a delay of approximately one year or more is presumptively prejudicial, see Doggett, 505 U.S. at 652 n. 1, 112 S.Ct. 2686 ('Depending on the nature of the charges, the lower courts have generally

> found postaccusation delay "presumptively prejudicial" at least as it approaches one year.') (citing 2 W. LaFave & J. Israel, Criminal Procedure § 18.2, p. 405 (1984); Gregory P.N. Joseph, Speedy Trial Rights in Application, 48 Fordham L.Rev. 611, 623 n. 71 (1980) (citing cases))."

Ex parte Walker, 928 So. 2d at 263-66.

The record in the instant case indicates that Crandle was arrested for second-degree assault on August 30, 2016, and that he was subsequently indicted for the charge on June 16, 2017. Crandle, through counsel, filed a motion to dismiss the second-degree-assault charge against him on October 7, 2020, and the circuit court granted the motion on November 19, 2020. Given the significant length of time that passed between the issuance of the arrest warrant and the date on which Crandle filed his speedy-trial motion, the length of the delay in the instant case was presumptively prejudicial and triggered the examination of the Barker factors.

B.

We next consider the reasons for the delay. In regard to the second Barker factor, the reason for the delay, the Alabama Supreme Court stated:

> "The State has the burden of justifying the delay. See Barker, 407 U.S. at 531, 92 S.Ct. 2182; Steeley v. City of Gadsden, 533

> So.2d 671, 680 (Ala. Crim. App. 1988). Barker recognizes three categories of reasons for delay: (1) deliberate delay, (2) negligent delay, and (3) justified delay. 407 U.S. at 531, 92 S.Ct. 2182. Courts assign different weight to different reasons for delay. Deliberate delay is 'weighted heavily' against the State. 407 U.S. at 531, 92 S.Ct. 2182. Deliberate delay includes an 'attempt to delay the trial in order to hamper the defense' or '"to gain some tactical advantage over (defendants) or to harass them."' 407 U.S. at 531 & n. 32, 92 S.Ct. 2182 (quoting United States v. Marion, 404 U.S. 307, 325, 92 S.Ct. 455, 30 L.Ed.2d 468 (1971)). Negligent delay is weighted less heavily against the State than is deliberate delay. Barker, 407 U.S. at 531, 92 S.Ct. 2182; Ex parte Carrell, 565 So.2d at 108. Justified delay—which includes such occurrences as missing witnesses or delay for which the defendant is primarily responsible—is not weighted against the State. Barker, 407 U.S. at 531, 92 S.Ct. 2182; Zumbado v. State, 615 So. 2d 1223, 1234 (Ala. Crim. App. 1993) ('"Delays occasioned by the defendant or on his behalf are excluded from the length of delay and are heavily counted against the defendant in applying the balancing test of Barker."') (quoting McCallum v. State, 407 So. 2d 865, 868 (Ala. Crim. App. 1981))."

Ex parte Walker, 928 So. 2d at 265.

In the present case, there is no evidence indicating that any of the delay in the prosecution of this case was a deliberate attempt by the State to postpone prosecution of this charge. In its response to Crandle's speedy-trial motion, the State conceded that the one-year delay between Crandle's arrest and his indictment was negligent delay resulting from the overburdened judicial system; however, the State contended that the

remainder of the delay was a justified delay based on Crandle's request for youthful-offender status in his capital-murder case and the fact that Crandle pleaded not guilty by reason of insanity in his capital-murder case, followed by years of seeking a competency evaluation in his capital-murder case. The circuit court, in its record on return to remand, contended that "the State was focused entirely on the murder charge," and determined that the delay was "at least negligent delay" by the State. (Record on Return to Remand, at 16.) After reviewing the record in this case and considering the State's concession that the first year of the delay was a negligent delay, we agree with the circuit court's determination that the delay in this case was, at least partially, a negligent delay. However, the record before this Court also confirms that this case was reset multiple times awaiting a determination of whether Crandle was competent to stand trial in his capital-murder case. At the hearing on the matter, the circuit court stated:

> "THE COURT: ... The State takes the position that [it is] not willing to give up the assault charge, and I understand why the State takes the position that it is, but the Court recognizes that if Mr. Crandle ever regains his mental competency, he's going to be tried for capital murder, and, therefore, I'm going to grant the motion to dismiss the assault second charge over the State's objection because the charges that are still facing

> Mr. Crandle if he regains mental competency. He's still committed to the Department of Corrections.
>
> "The Court is monitoring this case every six months according to the rules of procedure because of this, and if he's ever restored to competency, he'll return and he'll be tried for capital murder."

(R. 4.) Because it appears that the court acknowledged at the hearing that the State was unable to move forward with the prosecution of the second-degree assault case because of Crandle's competency being called into question, the circuit court should also have recognized that part of the delay was justified and should not weigh against the State. See Barker, 407 U.S. at 531.

C.

Next, we must evaluate the defendant's assertion of his right to a speedy trial, which is the third Barker factor. This Court has held:

> "An accused does not waive the right to a speedy trial simply by failing to assert it. Barker, 407 U.S. at 528, 92 S. Ct. 2182. Even so, courts applying the Barker factors are to consider in the weighing process whether and when the accused asserts the right to a speedy trial, 407 U.S. at 528-29, 92 S. Ct. 2182, and not every assertion of the right to a speedy trial is weighted equally. Compare Kelley v. State, 568 So. 2d 405, 410 (Ala. Crim. App. 1990)('Repeated requests for a speedy trial weigh heavily in favor of an accused.'), with Clancy v. State, 886 So. 2d 166, 172 (Ala. Crim. App. 2003) (weighting third factor against an accused who asserted his right to a speedy trial two weeks before trial, and stating: '"The fact that

> the appellant did not assert his right to a speedy trial sooner 'tends to suggest that he either acquiesced in the delays or suffered only minimal prejudice prior to that date.'") (quoting Benefield v. State, 726 So. 2d 286, 291 (Ala. Crim. App. 1997), additional citations omitted), and Brown v. State, 392 So. 2d 1248, 1254 (Ala. Crim. App. 1980) (no speedy-trial violation where defendant asserted his right to a speedy trial three days before trial)."

Ex parte Walker, 928 So. 2d at 266-67.

In this case, it is undisputed that Crandle failed to assert his right to a speedy trial until October 7, 2020. In its order on remand, the circuit court acknowledged Crandle's delay in asserting his right to a speedy trial; however, the court also noted "the State's failure to pursue the assault second case" and found that these facts "balance[d] each other out." (Record on Return to Remand, at 16.) We disagree. The State's actions are irrelevant in the court's determination of whether and when Crandle asserted his right to a speedy trial. Thus, Crandle's failure to assert his right to a speedy trial for over four years suggests that Crandle either "acquiesced to the delays or suffered only minimal prejudice" as a result of the delays. See Benefield, 726 So. 2d at 291. Therefore, we disagree with the court in regard to the third Barker factor, and we hold that this factor weighs in favor of the State.

D.

Lastly, we must determine the extent of the prejudice suffered by Crandle as a result of the delay in his case. In his motion to dismiss for denial of his right to a speedy trial, Crandle alleged that "witnesses have disappeared, evidence has been lost and the defendant will experience unfair prejudice having to defend himself on charges that arose out of [an] incident that occurred" over four years ago. (C. 5.) The State, in its response, alleged that Crandle's claim of the loss of exculpatory evidence was insufficient because he failed to state what evidence or witnesses had been lost.

In making its determination concerning the last Barker factor, the circuit court found that there was oppressive pretrial confinement. This determination was based on the court's consideration of the nature of the offense – i.e., that second-degree assault was a class B felony and that, because Crandle did not have any prior convictions, he had already served twice the minimum sentence that could have been imposed upon conviction. The court further stated in its order on remand:

> "Next, while it is true that the State was prevented from trying the assault second case due to Mr. Crandle's mental health issues, arguably there has been anxiety and concern on his part because he may not understand why his trial on assault second is so long delayed. However, the court will not

> find this as a matter of fact without testimony from Mr. Crandle – which it does not intend to elicit.
>
> "Lastly, given that as of the time the motion to dismiss was granted, 4 years had passed (now 5 years). It is doubtless that dimming memories and loss of exculpatory evidence will hamper Mr. Crandle from adequately defending his case. However, the court will not find this as a matter of fact without testimony from witnesses – which it does not intend to elicit."

(Record on Return to Remand, at 17.)

This Court has stated:

> "Because 'pretrial delay is often both inevitable and wholly justifiable,' Doggett [v. United States], 505 U.S. [647,] 656, 112 S. Ct. 2686 [(1992)], the fourth Barker factor examines whether and to what extent the delay has prejudiced the defendant. Barker, 407 U.S. at 532, 92 S.Ct. 2182. The United States Supreme Court has recognized three types of harm that may result from depriving a defendant of the right to a speedy trial: ' "oppressive pretrial incarceration," "anxiety and concern of the accused," and "the possibility that the [accused's] defense will be impaired" by dimming memories and loss of exculpatory evidence.' Doggett, 505 U.S. at 654, 112 S.Ct. 2686 (quoting Barker, 407 U.S. at 532, 92 S.Ct. 2182, and citing Smith v. Hooey, 393 U.S. 374, 377-79, 89 S.Ct. 575, 21 L.Ed.2d 607 (1969); United States v. Ewell, 383 U.S. 116, 120, 86 S.Ct. 773, 15 L. Ed.2d 627 (1966)). 'Of these forms of prejudice, "the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." ' 505 U.S. at 654, 112 S.Ct. 2686 (quoting Barker, 407 U.S. at 532, 92 S.Ct. 2182).
>
> "....

"The United States Supreme Court in Doggett [v. United States, 505 U.S. 647 (1992),] used three hypothetical cases to demonstrate the accused's burden under the fourth Barker factor. 505 U.S. at 656- 57, 112 S.Ct. 2686. See Robinson v. Whitley, 2 F.3d 562, 570 (5th Cir. 1993) (discussing Doggett). The accused's burden 'of proof in each situation varies inversely with the [State]'s degree of culpability for the delay.' Robinson, 2 F.3d at 570 (citing Doggett, 505 U.S. at 656, 112 S.Ct. 2686). In the first scenario, where the state pursues the accused 'with reasonable diligence,' the delay -- however long -- generally is excused unless the accused demonstrates 'specific prejudice to his defense.' Doggett, 505 U.S. at 656. Thus, when the state acts with reasonable diligence in bringing the defendant to trial, the defendant has the burden of proving prejudice caused by the delay.

"The second situation recognized in Doggett involves bad-faith efforts by the state to delay the defendant's trial. For example, intentional delay by the state in order 'to gain some impermissible advantage at trial' weighs heavily against the state, and a bad-faith delay the length of the delay in Doggett [8 and 1/2 years] likely will 'present an overwhelming case for dismissal.' 505 U.S. at 656, 112 S.Ct. 2686 (citing Barker, 407 U.S. at 531, 92 S.Ct. 2182). Obviously, the burden on the accused to establish prejudice in this scenario would be minimal at most, and depending on how heavily the other Barker factors weigh against the state, the fourth factor's inquiry into prejudice could be rendered irrelevant. See Hoskins [v. Wainright], 485 F.2d [1186,] 1192 [(5th Cir. 1973)] ('[T]here must be some point of coalescence of the other three factors in a movant's favor, at which prejudice -- either actual or presumed -- becomes totally irrelevant.'); Turner [v. State], 378 So. 2d [1173,] 1179 [(Ala. Crim. App. 1979)].

"The third scenario recognized in Doggett involves delay caused by the state's 'official negligence.' Doggett, 505 U.S. at 656-57, 112 S.Ct. 2686. Official negligence 'occupies the middle ground' between bad-faith delay and diligent

> prosecution. Id. In evaluating and weighing negligent delay, the court must 'determine what portion of the delay is attributable to the [state]'s negligence and whether this negligent delay is of such a duration that prejudice to the defendant should be presumed.' Robinson, 2 F.3d at 570 (citing Doggett, 505 U.S. at 656-58, 112 S.Ct. 2686). The weight assigned to negligent delay 'increases as the length of the delay increases.' United States v. Serna-Villarreal, 352 F.3d 225, 232 (5th Cir. 2003) (citing Doggett, 505 U.S. at 656-57, 112 S.Ct. 2686). Negligent delay may be so lengthy -- or the first three Barker factors may weigh so heavily in the accused's favor -- that the accused becomes entitled to a finding of presumed prejudice. 352 F.3d at 231 (citing Robinson, 2 F.3d at 570, citing in turn Doggett, 505 U.S. at 655, 112 S.Ct. 2686). When prejudice is presumed, the burden shifts to the state, which must then affirmatively show either that the delay is 'extenuated, as by the defendant's acquiescence,' or 'that the delay left [the defendant's] ability to defend himself unimpaired.' Doggett, 505 U.S. at 658 & n.4, 112 S.Ct. 2686."

Ex parte Walker, 928 So. 2d at 266-68.

Here, contrary to Crandle's assertion in his brief on appeal that prejudice should be presumed, the length of the delay is not so lengthy that Crandle is entitled to presumed prejudice. See, e.g., Bailey v. State, 67 So. 3d 145 (Ala. Crim. App. 2009)(holding that a 41-month delay in a drug case did not violate the right to a speedy trial); State v. Stovall, 947 So. 2d 1149 (Ala. Crim. App. 2006) (same); State v. White, 962 So. 2d 897 (Ala. Crim. App. 2006) (holding that the circuit court erred in dismissing a drug charge after 42-month delay when only speedy-trial motion was a

motion to dismiss filed less than 3 months before case was dismissed); Yocum v. State, 107 So. 3d 219 (Ala. Crim. App. 2011) (holding that a 45-month delay did not violate the defendant's constitutional right to a speedy trial); Corn v. State, 387 So. 2d 275 (Ala. Crim. App. 1980)(holding that a 46-month delay was insufficient to warrant dismissal of case on speedy trial grounds); and Roberson v. State, 864 So. 2d 379 (Ala. Crim. App. 2002) (holding that a 74-month delay in a first-degree-possession-of-marijuana case did not deprive the defendant of his right to a speedy trial even though he had asserted his right to a speedy trial 4 times). Additionally, as previously stated, there is no evidence indicating that any portion of the delay in Crandle's case was deliberate on the State's part. Aside from the length of the delay, the circuit court's statements concerning the amount of prejudice that Crandle suffered appear to be based solely on the court's own beliefs of the circumstances of Crandle's cases, and not on evidence presented by Crandle or evidence contained in the record. The court admits that it could not make such factual determinations without holding another hearing, which the court did not intend to do.

In the present case, Crandle carries at least some burden to establish he was prejudiced by this delay. Crandle, however, has failed to do so. Aside from Crandle's general assertion that he was prejudiced by a loss of witnesses and lost evidence, he failed to indicate to the court any specific information concerning the alleged loss of witnesses or loss of evidence or to offer any evidence in support of his contention. "With no presumed prejudice and minimal-if any-actual prejudice in [Crandle's] case, the delay did not violate [his] right to a speedy trial." See State v. Jones, 35 So. 3d 644, 659 (Ala. Crim., App. 2009)(citing Doggett, 505 U.S. at 656, 112 S.Ct. 2686 ("Our speedy trial standards recognize that pretrial delay is often both inevitable and wholly justifiable."); Barker, 407 U.S. at 521, 92 S.Ct. 2182 (recognizing that delay in bringing an accused to trial does not always prejudice the accused); United States v. Serna-Villarreal, 352 F.3d 225, 230 (5th Cir. 2003)("Obviously, in this balancing [of the Barker factors], the less prejudice [an accused] experiences, the less likely it is that a denial of a speedy trial right will be found.")). Consequently, "balancing the four Barker factors, we cannot say that the delay in this case experienced by [Crandle] prejudiced [him]

to the degree that would warrant the dismissal" of the second-degree-assault charge against him at this time. Id.

Conclusion

In conclusion, although the length of the delay in this case was quite lengthy, the delay was not deliberate and was, at least partially, justifiable. Crandle also waited over four years to assert his right to a speedy trial. Because the record does not contain sufficient evidence to support a finding that Crandle has been prejudiced by this delay, we hold that the circuit court improperly granted Crandle's motion to dismiss the second-degree-assault charge against Crandle based on the denial of his right to a speedy trial. Accordingly, the judgment of the circuit court is reversed, and this cause is remanded for the circuit court to set aside its order dismissing the indictment and restore Crandle's case to the active docket.

REVERSED AND REMANDED.

Windom, P.J., and Kellum, Cole, and Minor, JJ., concur.